

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 25, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:07MD-061

MAUI

Mutual Cancellation of General Lease No. S-4195 and Issuance of Direct Lease to Lokahi Pacific for Affordable Rental Housing Serving Low-Income Individuals Purposes, Kamaole, Maui, Tax Map Key: (2) 3-9-5:46.

APPLICANT:

Lokahi Pacific, a Hawaii non-profit whose mailing address is 1935 Main Street Suite 204, Wailuku, Hawaii 96793.

LEGAL REFERENCE:

Section 171-6 and 43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of government land of Kamaole situated at Kula, Maui, identified by Tax Map Key: (2) 3-9-5:46, as shown on the attached map labeled Exhibit A.

AREA:

9,469 square feet, more or less.

ZONING:

State Land Use District:	Urban
County of Maui CZO:	A-1, Apartment

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES _____ NO _____x

CURRENT USE STATUS:

Encumbered by General Lease No. S-4195, Hale Lokahi Elua, Lessee, for apartment purposes and accessory uses. Lease to expire on April 21, 2033. Last rental reopening occurred on April 21,

2003. Rent is currently \$20,000 per annum.

LEASE TERMS AND CONDITIONS:

CHARACTER OF USE:

Affordable rental housing serving low-income individuals.

LEASE TERM:

Thirty (30) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

\$480.00 per annum.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th and 20th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities - Electricity, telephone, water

Slope - Level

Elevation - Sea level

Rainfall - 10 inches per year

SCS Soil Series - Not applicable

Land Study Bureau - Not applicable

Legal access to property - Staff has verified that there is legal access to the property off of South Kihei Road.

Subdivision - Staff has verified that the subject property is a legally subdivided lot.

Encumbrances - None

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u>x</u>	NO	<u> </u>
Registered business name confirmed:	YES	<u>x</u>	NO	<u> </u>
Applicant in good standing confirmed:	YES	<u>x</u>	NO	<u> </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay all document fees and if necessary recordation fees.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. a, Item No. 1 that states "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

BACKGROUND:

The Land Board at its meeting of January 19, 1968, under agenda Item F-15, approved staff's recommendation to public auction a sixty-five (65) year lease for apartment purposes and accessory uses. The adjacent property owner was proposing to construct an 8-unit, 2-story apartment building similar to his, on the State property. On April 22, 1968, a public auction was held in Wailuku. The successful bidder was Mr. Tyson E. Benson. Upset rent: \$710.00 per annum. General Lease No. S-4195 commenced on April 22, 1968.

With Land Board approval, the lease has been assigned over the years. The Land Board at its April 8, 1993 meeting, under agenda Item F-2, consented to the assignment from The Flags Resort Apartments, Inc. to Lokahi Pacific, Inc., a Hawaii non-profit corporation. Consideration paid for the improvements was \$400,000.

A few years later, the Land Board on January 14, 1994, under agenda Item F-1-a, consented to the assignment from Lokahi Pacific, Inc. to Hale Lokahi Elua, a Hawaii non-profit corporation. Staff notes, this is a very old lease. It does not contain provisions for the Land Board to review and approve the consideration paid by the Assignee, and to condition its consent on the payment by the Lessee of a premium.

The April 22, 2003 lease reopening resulted in many unresolved questions. This was a public auction lease and rent was based on 'fair market.' After 1994, the State tenant was a non-profit and operating a low-income rental project. The tenant asked the

Department to find a way to keep the ground rent reasonable, in order for them to be able to continue providing an apartment project for the working poor.

Our best fix solution is to mutually cancel General Lease No. S-4195 and issue a new lease to the Applicant. Our analysis follows.

ANALYSIS:

The highest and best use allowable in the county zoning is apartment. Applicant is not proposing to change the current use.

Applicant has provided evidence of 501(c)(3) status, therefore qualifies for a direct lease. Affordable housing is a Statewide problem. Although Applicants' project is small, it is and will always be 'an affordable rental'.

Staff has requested information on the Applicant's operations, services, program measurements, budget and funding. [Exhibit B]

The Lessee is in compliance with all lease terms and conditions. Rent is paid up to May 21, 2007. Liability insurance expires on July 1, 2007. Lessee has posted a surety bond that expires on November 21, 2007. In the past two (2) years, no Notice of Default letters were issued.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Comments were solicited from:

HHFDC	No response
DHHL	No response
County of Maui Planning	No objections
County of Maui Public Works	No response
County of Maui Water	No response
OHA	No response

DISCUSSION ON RENT:

As background, the Board of Land and Natural Resources (Board) typically issues leases to private individuals and entities via public auction. The new rent at reopening is established at fair market rental value by an appraisal. If the tenant or prospective tenant is an eleemosynary (charitable) organization, the Board may issue the lease, at a nominal rent, by direct negotiation. The statute providing the Board this authority is as follows:

§171-43.1 Lease to eleemosynary organizations. The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction,

public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L 1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c 212, §3]

It is noted that the 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while the 501(c)(3) organization is a privately organized charitable organization.

Therefore, when considering lease dispositions to eleemosynary (charitable) organizations or religious organizations, the Board may issue the lease by public auction at fair market rent, or by direct negotiation at an amount below fair market rental (i.e., nominal rent). On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the Minimum Rent for Lease be no less than \$480 per year. Land Division generally issues leases at fair market rental value as determined by an appraiser or via public auction. Staff believes "nominal rent" under Section 171-43, Hawaii Revised Statutes ought to be anywhere between fair market rent, or lower, but not lower than the minimum rent of \$480 per year.

There should be a reasonable and fair annual rent for all Land Division non-profit tenants. Therefore, staff is recommending the new annual rent be \$480.

RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the mutual cancellation of General Lease No. S-4195 assigned to Hale Lokahi Elua, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current mutual cancellation lease document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Declare that, after considering the potential effects of the

proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

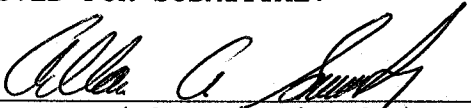
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to Lokahi Pacific covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current non-profit lease document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

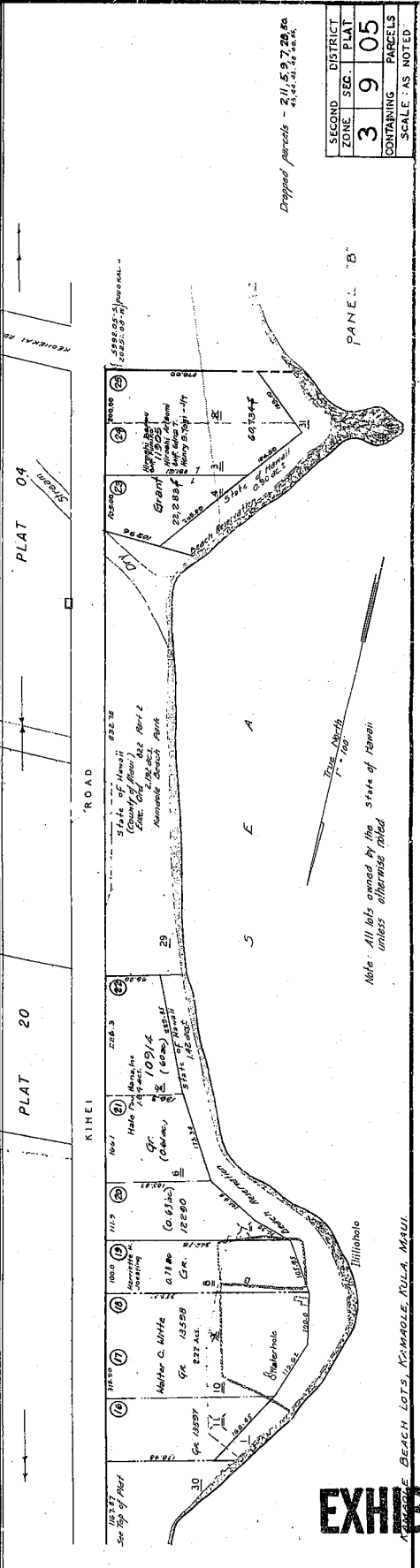
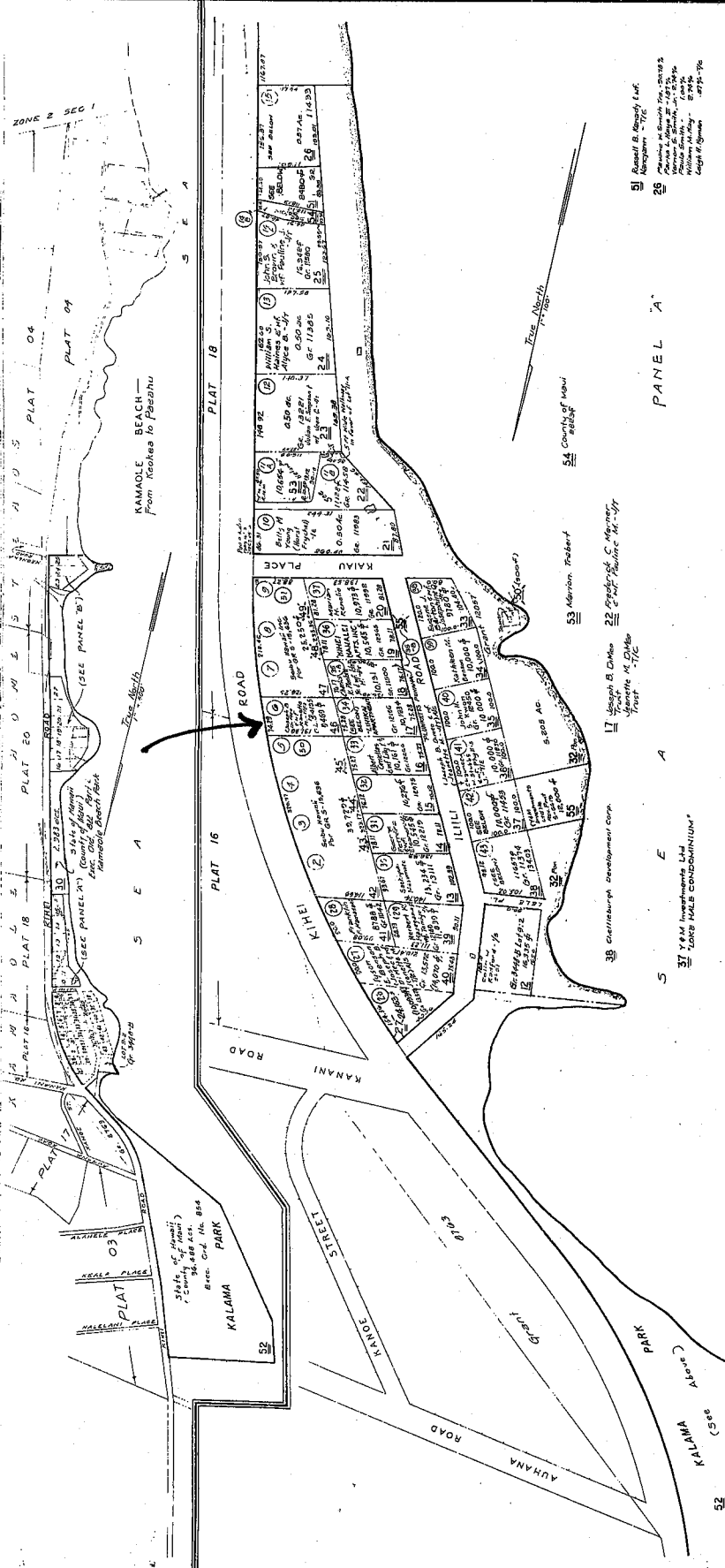


Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



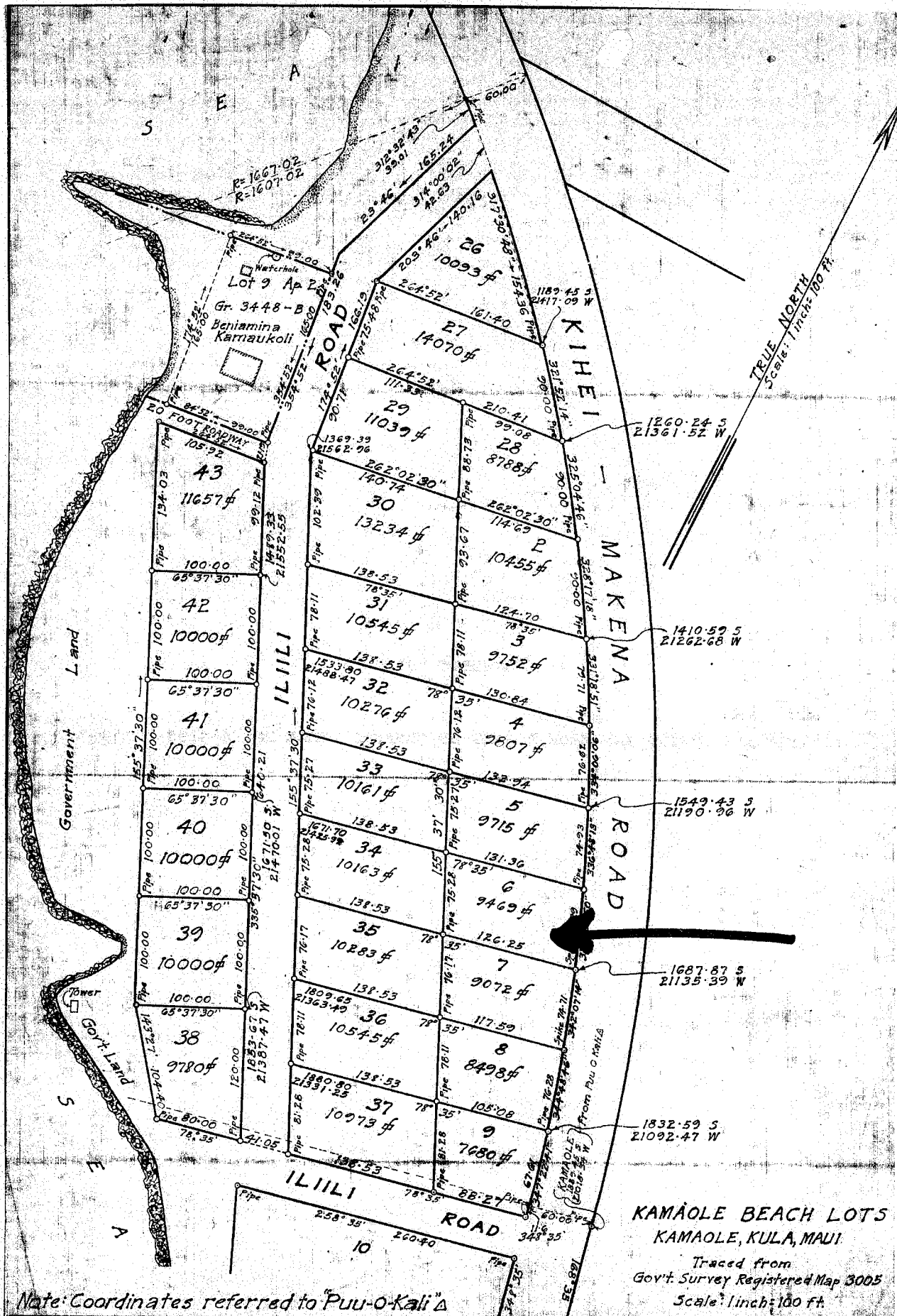
Allan A. Smith, Interim Chairperson



SECOND	DISTRICT
3	9
05	05
CONTAINING	PARCELS
SCALE: AS NOTED	

Dropped parcels - 211,597.20 ac.
211,597.20 ac.

EXHIBIT "A"



Note: Coordinates referred to Puu-o-Kali Δ

KAMAOLE BEACH LOTS
KAMAOLE, KULA, MAUI
Traced from
Gov't. Survey Registered Map 3005
Scale: 1 inch = 100 ft.

58406



Lokahi Pacific

2001 APR -2 P 3:32

DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

RECEIVED

'07 APR -2 A8:18

DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

March 29, 2007

Mr. Peter T. Young, Chairperson
Department of Land & Natural Resources
State of Hawaii
P. O. Box 621
Honolulu, HI 96809

Re: General Lease No. S4195
TMK: (2) 3-9-05: Parcel 46
Hale Lokahi Elua, Kihei, Maui

Dear Mr. Young:

Pursuant to our request to have the Land Board cancel our current lease and consider issuing Lokahi a new lease pursuant to Section 171-43.1, Hawaii Revised Statutes, enclosed please find our non-profit Application and Qualification Questionnaire with all attachments thereto.

The project, built in 1969, located at 2170 S. Kihei Road, Kihei, Maui, Hawaii, is an eight-unit affordable housing rental serving low-income individuals. As owner of the property since 1993, we have struggled to maintain the units at an affordability level (\$600 studio/\$850 1-bedroom) let alone trying to update and renovate an aging project that has provided stability to long term residents over the years. If we could obtain some relief from the \$20,000 per year lease payments, rental income could be wisely used to aid in the renovation of the project and of course continue to maintain rents at an affordable level.

Your assistance in allowing us to play a small part in resolving the statewide affordable housing crisis by continuing with a much-needed project, is greatly appreciated. If more information is required, feel free to contact me directly.

Sincerely,

KAMAILE M. SOMBELON
Executive Director

Enclosures

EXHIBIT "B"

APPLICATION AND QUALIFICATION QUESTIONNAIRE
(Non-Profit)

Write answers in the spaces provided. Attach additional sheets as necessary, clearly indicating the applicable section number.

Part I: General Information

1. Applicant's legal name: Lokahi Pacific
2. Applicant's full mailing address:
1935 Main Street, Suite 204
Wailuku, Hawaii 96793
3. Name of contact person: Kamaile Sombelon, Executive Director
Contact person Phone No.: (808)242-5761, Ext. 23 Fax No.: (808)244-2057
4. Applicant is interested in the following parcel:
Tax Map Key No.: (2)3-9-05:46 Location: Kihei, Maui, Hawaii
If Applicant is current lessee: General Lease No.: S-4195
5. When was Applicant incorporated? 1971
6. Attach the following:
 - A. Articles of Incorporation
 - B. Bylaws
 - C. List of the non-profit agency's Board of Directors
 - D. IRS 501(c)(3) or (c)(1) status determination
 - E. Tax clearances from State of Hawaii and respective county Real Property Tax Office.
 - F. Audited financial statements for the last three years. If not audited, explain why.
If Applicant is a new start-up, attach projected capital and operating budgets.
 - G. Any program material which describes eligibility requirements or other requirements to receive services

Part II: Qualification

7. Is Applicant registered to do business in Hawaii: Yes No
8. Has Applicant received tax exempt status from the Internal Revenue Service? Yes No
9. Is Applicant licensed or accredited in accordance with federal, State or county statutes, rules, ordinances, to conduct the proposed activities? Yes No

List all such licenses and accreditations required: Community Housing Development

Organization (CHDO)

10. Is Applicant in default or otherwise not in good standing with any State department (e.g. POS agency, DCCA, DLNR, etc.)? Yes No

If yes, explain:

11. Has Applicant had a State of Hawaii lease, permit, license, easement or sale in fee cancelled within the last five years? If yes, list:

Yes/No

<u>Doc. No.</u>	<u>Type of Agreement</u>	<u>Term of Agreement</u>

12. Does Applicant have any policies which discriminate against anyone on the basis of race, creed, color, national origin, sex or physical handicap?

Yes/No

If yes, explain:

13. Has Applicant received funding from a federal, State, or county government agency, the Aloha United Way, and/or a major private foundation within the last three years? Please list all such contracts below:

Yes/No

<u>Agency</u>	<u>Contract Term</u>	<u>Contract Amount</u>
<u>See attached sheet.</u>		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$

14. If Applicant has not received funding from a federal, State or county government agency, the Aloha United Way and/or a major private foundation during the past three years, describe Applicant's qualifications to effectively perform the proposed services, including but not limited to, grants or subsidies received from non-major, private funders and/or staff or Board members who possess significant experience in Applicant's service field.

N/A

Part III: Program Activities and Persons to be Served

15. What activities will be conducted on the premises to be leased?

Lokahi Pacific provides eight affordable rental units for persons at 50% and below of the Maui County median income.

16. What are the specific objectives of these activities?

To provide long term housing for gap group renters.

17. Describe the community need for and the public benefit derived from these activities.

This project plays a small role in impacting the affordable housing demands Statewide, however, the diverse households served have the comfort of working and residing in their community.

18. Describe the targeted population for these activities by: 1) age group, 2) gender, 3) ethnic background, 4) income level, 5) geographic location of residence, 6) special needs/disability, and 7) other applicable characteristic(s).

The targeted income levels are:

1 person - \$25,050

2 persons - \$28,650

3 persons - \$32,200

19. Describe all eligibility requirements of clients to participate in the activities, e.g. age, income level, ethnic background, income level, disability, etc.

To be accepted as a resident of Hale Lokahi Elua, you must be 1) An adult (18 years and older) of any age, sex or ethnicity, 2) Be a family of no more than three individuals of any age, sex or ethnicity and 3) Have an income limite of 50% or less of the median income for Maui County.

20. Do you require membership to participate in these activities?
If yes, list the requirements of becoming and remaining a member:

Yes ☒ No

21. How many unduplicated persons will engage in the activities annually? **N/A**

Activity

Persons Per Year

22. Is State funding made available for the activities to be conducted on the leased premises?

Yes ☒ No

If yes, by which State agency: _____

23. List all activities to be conducted on the leased premises which require payment of excise taxes, e.g. subleasing, sale of products or services. Include an estimate of annual gross revenues from each activity.

None

Development of the Land **N/A – Existing Property**

24. Describe the proposed site development plan for the property, indicating the location and size of buildings, parking areas, landscaped areas and related uses. Attach sketch of plan if available.

25. What improvements to the land do you intend to make and at what cost?

26. How will the improvements be funded?

27. Describe all environmental, land use and other permitting requirements which must be met to develop the land as proposed.

N/A

28. Will you be subleasing any portion of the property? If yes, describe the sublease uses:

No

Part V: Notarized Certification

I/We hereby certify that the statements and information contained in this Application and Questionnaire, including all attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, I/we may be disqualified from receiving a lease or my/our lease may be canceled.

Lokahi Pacific

Applicant Name

Applicant Name

By:

Kamaile M. Sombelon

By:

Kamaile M. Sombelon

Its:

Executive Director

Its:

Date: March 29, 2007

Subscribed and sworn to before me this
29th day of March, 2007.

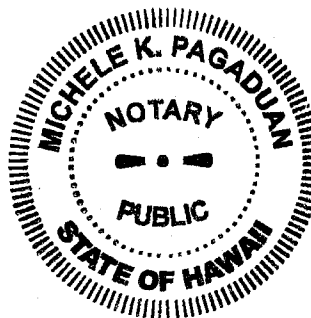
Nicholas K. [Signature]

Notary Public

County of: Maui

State of: Hawaii

My commission expires: 04/14/10



Internal Revenue Service

Department of the Treasury

**P. O. Box 2508
Cincinnati, OH 45201**

Date: September

Lokahi Pacific
1935 Main Street Ste. 204
Wailuku, HI 96793

Person to Contact:
Ruth Ohmer 31-03159
Customer Service Specialist
Toll Free Telephone Number:
8:00 a.m. to 9:30 p.m. EST
877-829-5500
Fax Number:
513-263-3756
Federal Identification Number:
99-0146837

Dear Madam:

This is in response to your letter dated May 31, 2000, requesting an address change for your organization. We have updated our records to reflect the address change as indicated above.

Our records indicate that a determination letter issued in March 1974, granted your organization exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. That letter is still in effect.

Based on information subsequently submitted, we classified your organization as one that is not a private foundation within the meaning of section 509(a) of the Code because it is an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

This classification was based on the assumption that your organization's operations would continue as stated in the application. If your organization's sources of support, or its character, method of operations, or purposes have changed, please let us know so we can consider the effect of the change on the exempt status and foundation status of your organization.

Your organization is required to file Form 990, Return of Organization Exempt from Income Tax, only if its gross receipts each year are normally more than \$25,000. If a return is required, it must be filed by the 15th day of the fifth month after the end of the organization's annual accounting period. The law imposes a penalty of \$20 a day, up to a maximum of \$10,000, when a return is filed late, unless there is reasonable cause for the delay.

All exempt organizations (unless specifically excluded) are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more paid to each employee during a calendar year. Your organization is not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Organizations that are not private foundations are not subject to the excise taxes under Chapter 42 of the Code. However, these organizations are not automatically exempt from other federal excise taxes.

Donors may deduct contributions to your organization as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to your organization or for its use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

EXHIBIT "B"

Lokahi Pacific
99-0146837

Your organization is not required to file federal income tax returns unless it is subject to the tax on unrelated business income under section 511 of the Code. If your organization is subject to this tax, it must file an income tax return on the Form 990-T, Exempt Organization Business Income Tax Return. In this letter, we are not determining whether any of your organization's present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

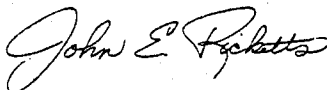
The law requires you to make your organization's annual return available for public inspection without charge for three years after the due date of the return. You are also required to make available for public inspection a copy of your organization's exemption application, any supporting documents and the exemption letter to any individual who requests such documents in person or in writing. You can charge only a reasonable fee for reproduction and actual postage costs for the copied materials. The law does not require you to provide copies of public inspection documents that are widely available, such as by posting them on the Internet (World Wide Web). You may be liable for a penalty of \$20 a day for each day you do not make these documents available for public inspection (up to a maximum of \$10,000 in the case of an annual return).

Because this letter could help resolve any questions about your organization's exempt status and foundation status, you should keep it with the organization's permanent records.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

This letter affirms your organization's exempt status.

Sincerely,



John E. Ricketts, Director, TE/GE
Customer Account Services

EXHIBIT "B"

PHOTOGRAPHS OF SUBJECT PROPERTY
Kihei, Island of Maui, Hawaii



Westerly view of the subject property across S. Kihei Road.



Northerly view along S. Kihei Road. The subject property is to the left.